Badru Duja Khan a/l Mohamed Nabi Khan (deceased) (represented by Abu Talib Khan bin Badru Duja Khan as legal representative) v Ayaz Ahmad bin Mohamed Salleh Khan & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO K-02(IM)-2377–11 OF 2018
ABDUL KARIM, VAZEER ALAM AND MOHD SOFIAN JJCA
10 DECEMBER 2020

Civil Procedure — Costs — Taxation — High Court dismissed plaintiff's claim with costs ('order') — Court of Appeal ('COA') dismissed plaintiff's appeal two years later — Defendants failed to tax their High Court costs but applied seven years later for extension of time to proceed with taxation — Whether defendants were time-barred under Limitation Act 1953 ('the LA') from proceeding with the taxation — Whether applicable limitation period was six years from date of order under s 6(1) of the LA or 12 years under s 6(3) of LA — Whether limitation period began from date of order and not from date COA dismissed plaintiff's appeal — Whether taxation of costs did not come within meaning of phrase 'actions to enforce an award' under s 6(1)(c) of the LA — Whether taxing of bill of costs was not a fresh cause of action to enforce an award but a continuation of proceedings to determine the quantum

The High Court had dismissed the appellant's claim against the respondents with costs on 31 October 2010 ('the order'). The Court of Appeal ('COA') dismissed the appellant's appeal on 5 December 2012 and affirmed the order. The respondents did not tax their costs pursuant to the order until 30 April 2018 when they applied to court ('encl 15') for extension of time to proceed with the taxation of costs. The appellant objected, saying that the six-year limitation period under s 6(1) of the Limitation Act 1953 ('the LA') barred the respondents from proceeding with the taxation. The High Court judge allowed encl 15, holding that the applicable limitation period was 12 years pursuant to s 6(3) of the LA and that the limitation period ran from the date the COA dismissed the appellant's appeal. In the instant appeal against the decision, the appellant contended that 'actions to enforce an award' under s 6(1)(c) of the LA included a proceeding to tax an award of costs.

Held, unanimously dismissing the appeal and, pursuant to O 59 r 7(3) of the Rules of Court 2012, inviting the parties to submit on the costs to be awarded for the hearing of the instant appeal as well as for the proceedings before the High Court:

(1) When the order was made, the Rules of the High Court 1980 ('the RHC 1980') was applicable and since the costs were not quantified, the respondents were entitled to tax their costs by filing a bill of costs. Since neither the order nor O 59 stipulated the time within which the bill of costs was to be taxed, and since the registrar of the court also did not fix the time, time was at large and the respondents were not required to take immediate action to enforce the award of costs. There was nothing in law that barred the respondents, purely by reason of passage of time, from executing the order and having the quantum of costs determined (see paras 5, 13–14 & 18–20).

(2) The High Court judge was entirely correct to apply s 6(3) of the LA and hold that the limitation period was 12 years. However, the time ran not from the date of dismissal of the appellant's appeal by the COA but from the date of the order on 31 October 2010. Under the RHC 1980, once the costs were quantified and so ordered, it merged with the main judgment. Hence, the period of limitation to enforce the judgment on costs would be the same as the period for enforcing any judgment, namely, 12 years, under s 6(3) of the LA (see paras 25–24).

(3) The phrase 'actions to enforce an award' in s 6(1)(c) of the LA did not apply to an award of costs as the word 'actions' used in that section was in connection with a cause of action. The taxing of a bill of costs was not a cause of action to enforce an award but rather a continuation of proceedings to ascertain the quantum of costs awarded. Thus, an order for costs was a consequential order and therefore must be sought in the proceedings. A fresh action could not be brought to recover the costs. Taxation of an award of costs was not a fresh cause of action (see para 23).

(4) The respondents had explained their delay of some seven years in acting upon the order by stating that they had initially waited for the appellant's appeal to the COA to be disposed of and that, subsequently, there were several changes of solicitors and those solicitors had not acted on the respondents' instructions to tax the costs. Since the respondents had explained the reasons for the delay and the High Court judge had accepted them, there was no reason to disturb that exercise of discretion of the High Court judge. In any event, delay not amounting to misconduct could not constitute a ground to deprive a successful party of his costs. And the appellant had not shown that he was prejudiced by the delay such that the court should now deprive the respondents of their costs (see paras 26–28).

(5) By the time encl 15 was filed, the Rules of Court 2012 ('the ROC') had come into force replacing the RHC 1980 and, inter alia, abrogating the taxation regime under the former rules. The court now fixed costs at any appropriate stage of the proceedings after hearing submissions of the parties. Under O 59 r 7(3) of the ROC, the COA in exercise of its

appellate jurisdiction could determine and fix the costs of the appeal as well as of the costs of the proceedings connected with it in the court below. Pursuant to O 59 r 7(3), the parties were invited to orally submit on the issue of quantum of costs here and below (see paras 30 & 32).

[Bahasa Malaysia summary

Mahkamah Tinggi telah menolak tuntutan perayu terhadap responden dengan kos pada 31 Oktober 2010 ('perintah tersebut'). Mahkamah Rayuan ('MR') menolak rayuan perayu pada 5 Disember 2012 dan mengesahkan perintah tersebut. Responden tidak mengenakan cukai pada kos mereka menurut perintah tersebut sehinggalah pada 30 April 2018 apabila mereka memfailkan permohonan ke mahkamah ('lampiran 15') untuk melanjutkan masa untuk meneruskan pencukaian kos. Perayu membantah, dengan mengatakan bahawa had masa enam tahun di bawah s 6(1) Akta Had Masa 1953 ('AHM') menghalang responden untuk meneruskan dengan pencukaian. Hakim Mahkamah Tinggi membenarkan lampiran 15, dengan memutuskan bahawa tempoh had masa yang terpakai adalah 12 tahun menurut s 6(3) AHM dan bahawa tempoh had masa tersebut berjalan dari tarikh MR menolak rayuan perayu. Dalam rayuan semasa terhadap keputusan tersebut, perayu berpendapat bahawa 'tindakan untuk menguatkuasakan award' di bawah s 6(1)(c) AHM termasuk prosiding pencukaian pemberian kos.

Diputuskan, dengan sebulat suara menolak rayuan dan, menurut A 59 k 7(3) Kaedah-Kaedah Mahkamah 2012, memerintahkan pihak-pihak untuk mengemukakan kos yang akan diberikan bagi pendengaran rayuan semasa serta untuk prosiding di hadapan Mahkamah Tinggi:

(1) Apabila perintah tersebut dibuat, Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT 1980') terpakai dan oleh kerana kos tidak dikira, responden berhak untuk pencukaian kos dengan memfailkan bil kos. Oleh kerana perintah tersebut mahupun A 59 tidak menetapkan tempoh masa di mana bil kos harus dikenakan cukai, dan oleh kerana pendaftar mahkamah juga tidak menetapkan tempoh masa, terdapat pemanjangan tempoh masa dan responden tidak diperlukan untuk bertindak dengan segera untuk menguatkuasakan pemberian kos. Tidak ada undang-undang yang menghalang responden, semata-mata dengan alasan had masa, dalam melaksanakan perintah tersebut dan menentukan jumlah kos (lihat perenggan 5, 13–14 & 18–20).

(2) Hakim Mahkamah Tinggi telah dengan tepat menggunapakai s 6(3) AHM dan memutuskan bahawa tempoh hada masa adalah 12 tahun. Namun, tempoh masa berjalan bukan dari tarikh rayuan perayu ditolak oleh MR tetapi dari tarikh perintah tersebut pada 31 Oktober 2010. Di bawah KMT 1980, setelah kos dikira dan diperintahkan, ia bergabung dengan penghakiman utama. Oleh itu, tempoh had masa untuk menguatkuasakan penghakiman ke atas kos akan menjadi sama dengan

tempoh masa untuk menguatkuasakan sebarang penghakimanan, iaitu, 12 tahun, di bawah s 6(3) AHM (lihat perenggan 25–24).

(3) Frasa 'tindakan untuk menguatkuasakan suatu award' dalam s 6(1)(c) AHM tidak terpakai untuk pemberian kos kerana perkataan 'tindakan' yang digunakan dalam seksyen tersebut adalah berkaitan dengan kausa tindakan. Pencukaian bil kos bukanlah merupakan kausa tindakan menguatkuasakan suatu award tetapi pelanjutan prosiding untuk menaksirkan jumlah kos yang diberikan. Oleh itu, perintah untuk kos adalah perintah yang berturutan dan oleh itu mesti dipohon melalui prosiding. Tindakan baru tidak dapat diambil untuk mendapatkan kembali kos. Pencukaian pada pemberian kos bukanlah kausa tindakan baru (lihat perenggan 23).

(4) Responden telah menjelaskan kelewatan mereka selama lebih kurang tujuh tahun untuk bertindak ke atas perintah tersebut dengan menyatakan bahawa mereka pada awalnya telah menunggu rayuan perayu ke MR dilupuskan dan bahawa, lanjutan itu, terdapat beberapa penukaran peguamcara dan peguamcara tersebut tidak bertindak berdasarkan arahan responden terhadap pencukaian kos. Oleh kerana responden telah menjelaskan alasan kelewatan tersebut dan hakim Mahkamah Tinggi menerimanya, tidak ada sebab untuk mengganggu pelaksanaan budi bicara hakim Mahkamah Tinggi. Walau apa pun, kelewatan yang tidak terjumlah sebagai salah laku tidak boleh dijadikan alasan untuk menghalang pihak yang berjaya terhadap kosnya. Dan perayu tidak menunjukkan bahawa beliau telah diprejudiskan terhadap kelewatan tersebut sehingga mahkamah sekarang akan menghalang responden ke atas kosnya (lihat perenggan 26–28).

(5) Ketika lampiran 15 difailkan, Kaedah-Kaedah Mahkamah 2012 ('KKM') telah berkuatkuasa bagi menggantikan KMT 1980 dan, antara lain, membatalkan rejim pencukaian berdasarkan peraturan sebelumnya. Mahkamah kini menetapkan kos pada setiap tahap prosiding yang bersesuaian setelah mendengar penghujahan pihak-pihak. Di bawah A 59 k 7(3) KKM, MR dalam menjalankan bidang kuasa rayuannya dapat menentukan dan menetapkan kos rayuan serta kos prosiding yang berkaitan dengannya di mahkamah bawahan. Berdasarkan A 59 k 7(3), pihak-pihak diperintahkan untuk menghujahkan secara lisan mengenai isu jumlah kos di sini dan di bawah (lihat perenggan 30 & 32).]

Cases referred to

Charnjit Singh v Tan Chok How [1960] 1 MLJ 207 (refd)
Chin Yoke Choong Bobby & Anor v Hong Lam Marine Pte Ltd [2000] 1 SLR 137, CA (refd)
Punithavathi Ponniah v Ganendra Torquil Ponnusamy Ganendra [2014] 8 CLJ 735, CA (refd)

Sime Finance Ltd (formerly known as United Malaya Banking Finance Ltd) v Robin Woon Kim Yan [1997] 5 MLJ 471; [1997] 2 CLJ Supp 370, HC (refd)

Legislation referred to

Limitation Act 1953 s 6, 6(1), (1)(b), (3)
Rules of Court 2012 O 59 r 7, 7(3), Form 117
Rules of Supreme Court [UK] O 62 r 29
Rules of the High Court 1980 O 59, O 59 rr 1, 7(2)(c), 12, 12(a), (b), 14(a), (b), (c)

Sana bt Tufil Ahmad Ahmad (Surendra Ananth a/l Anandaraju with her) (Chambers of Sana Ahmad) for the appellant.
Ahmiza bt Ahmad (Halim Ashgar) for the respondent.

Vazeer Alam JCA (delivering judgment of the court):

INTRODUCTION

[1] The High Court in Malaya sitting at Alor Setar, via order dated 31 October 2010 ('order') dismissed the plaintiff's claim with costs. The relevant part of the order read:

> ... MAKA ADALAH DENGAN INI DIPERINTAHKAN bahawa *tuntutan Plaintif terhadap Defendan-Defendan ditolak dengan kos*.

[2] The plaintiff appealed that order. The Court of Appeal dismissed the appeal on 5 December 2012, and affirmed the order.

[3] The defendants did not act upon the order to tax their costs until 30 April 2018 when encl 15 was filed by the defendants seeking leave of court for extension of time to proceed with the taxation of costs.

[4] The plaintiff objected to the application in encl 15. However, the High Court allowed encl 15. The plaintiff now appeals that decision to this court.

ANTECEDENT FACTS

[5] When the order was made on 31 October 2010, the Rules of the High Court 1980 ('the RHC 1980') was applicable, and since costs were not quantified, the defendants were entitled to tax the costs as provided in O 59 of the RHC 1980 by filing a bill of costs.

[6] According to O 59 r 1 of the RHC 1980 — 'taxed costs' means costs taxed in accordance with O 59 and 'costs' includes fees, charges, disbursements,

A expenses and remuneration. Hence, the defendants would be entitled to all or any of these costs elements.

[7] According to O 59 r 12 of the RHC 1980, the power to tax costs vests with the registrar:

B

> Rule 12. Power of Registrar to tax costs. (O 59 r 12)
>
> The *Registrar shall have power to tax —*
>
> (a) *the costs or arising out of any cause or matter in the Court*;
>
> C (b) the costs directed by an award made on a reference to arbitration under any written law or pursuant to an arbitration agreement to be paid;
>
> (c) *any other costs the taxation of which is directed by an order or the Court; and*
>
> (d) any costs directed to be taxed or settled by or under any written law.

D

[8] In the present case the senior assistant registrar/deputy registrar at the High Court at Alor Setar would have had the power to tax the defendant's bill of costs in accordance to either O 59 r 12(a) and/or (b) of the RHC 1980, as ordered by the High Court judge in the order dated 31 October 2010.

E

[9] The order dated 31 October 2010, however, does not stipulate the time within which the Bill of Costs is to be filed/presented by the defendants for taxation.

F

[10] The defendants, after a lapse of more than seven years, filed a notice of application dated 30 April 2018 (encl 15) at the Alor Setar High Court for extension of time to execute the order dated 31 October 2010, which was basically to quantify the costs awarded. However, by this time, RHC 1980 had
G been repealed and replaced by the Rules of Court 2012 ('the ROC 2012').

[11] The plaintiff objected to the application, inter alia, on grounds that the defendant was barred by statutory limitation under s 6 of the Limitation Act. The application was heard by the High Court judge, who allowed the
H application in encl 15. The learned High Court judge found that the matter was not time barred, as the order had a 12 years statutory period of limitation in accordance to s 6(3) of the Limitation Act 1953. The learned judge further held that time for limitation started to run from the date of the Court of Appeal's dismissal of the plaintiff's appeal, which was on 5 December 2012.
I The plaintiff appeals that decision contending that limitation to enforce the order is six years pursuant to s 6(1) of the Limitation Act 1953, and that the filing of encl 15 is out of time.

THE ISSUES

[12] The primary issues are:

(a) whether the court can grant time to the plaintiff for costs to taxed; and

(b) whether the matter is time barred under s 6(1) of the Limitation Act.

Whether the court can grant time to the plaintiff to file the bill of costs

[13] Unlike O 62 r 29 of the English Rules of Supreme Court, where there is a time period of three months for proceedings to be commenced for the taxation of costs, neither O 59 of the RHC 1980 nor O 59 of the ROC 2012 stipulate any time period for filing the application to tax the costs.

[14] The High Court, in making the order dated 31 October 2010, could have stipulated the time period for the defendants to tax their cost. However, no such time was stipulated in that order.

[15] Interestingly, O 59 r 14(b) of the RHC 1980 provides that where no 'period is specified by or under this order or by the Court for the doing of anything in or in connection with such proceedings', the registrar may 'specify the period within which the thing is to be done'.

[16] Further, O 59 r 14(a) of the RHC 1980 provides that the registrar may 'extend the period within which a party is required by or under this order to begin proceedings for taxation or to do anything in or in connection with proceeding before the Registrar'.

[17] Additionally, under O 59 r 14(c) of the RHC 1980 the registrar may 'extend any such period as is referred to in the foregoing provisions of this rule although the application for extension is not made until after the expiration of that period'.

[18] Hence, under O 59 of the RHC 1980 the registrar was given wide discretion to set the time for compliance of an order for taxation of costs, and also to grant extensions of time for compliance.

Rule 14 Extension, etc. of time (O 59 r 14)

(1) *The Registrar may —*

(a) *extend the period within which a party is required by or under this Order to begin proceedings for taxation or to do anything in or in connection with proceeding before the Registrar*;

(b) *where no period is specified by or under this Order or by the Court for the doing*

> *of anything in or in connection with such proceedings, specify the period within which the thing is to be done.*
>
> (2) Where an order of the Court specifies a period within which anything is to be done by or before the Registrar then unless the Court otherwise directs, the Registrar may from time to time extend the period so specified on such terms (if any) as he thinks just.
>
> (3) The Registrar may extend any such period as is referred to in the foregoing provisions of this rule although the application for extension is not made until after the expiration of that period.

[19] Now, it is obvious from these provisions of the RHC 1980 that when no time for compliance is stipulated in an order for costs, time was at large; and the registrar had the power to fix time, if the need should arise. There was, however, the provision in O 59 r 7(2)(c) of the RHC 1980 which required an applicant not to delay a taxation proceeding unnecessarily, and if there was unreasonable delay, the court may take into account the delay in determining the quantum of costs.

[20] In this case, the court did not fix time. And when time is not fixed, the defendants were not required to take immediate action to enforce the award of costs. This was the observation of Suriyadi J (as he then was) in *Sime Finance Ltd (formerly known as United Malaya Banking Finance Ltd) v Robin Woon Kim Yan* [1997] 5 MLJ 471; [1997] 2 CLJ Supp 370 (HC), where in reference to a similar argument, he held:

> Perusing the Rules of the High Court, except for O 59 r 7(2)(c) which requires an applicant not to delay a taxation proceeding unnecessarily, *there is no other provision available requiring him to take immediate action to enforce the award of costs after a final judgment*.
>
> *Only s 6 of the Limitation Act places some kind of a curtailment to an unbridled period*. (Emphasis added.)

That pronouncement was considered with approval by the Court of Appeal in *Punithavathi Ponniah v Ganendra Torquil Ponnusamy Ganendra* [2014] 8 CLJ 735, CA. Hence, we find that notwithstanding the application in encl 15 and the decision of the High Court in respect of that enclosure, there was nothing in law to bar the defendants, purely by reason of passage of time, from executing the order and have the quantum of costs determined.

Whether the matter is time barred under s 6 of the Limitation Act?

[21] The plaintiff/appellant contends that based on the Court of Appeal's pronouncement in *Punithavathi,* s 6(1)(c) of the Limitation Act 1953 applies to an award of costs, and that there is a six years statutory time bar that starts

running from the date of the order dated 31 October 2010.

[22] Section 6(1) of the Limitation Act 1953 reads:

> 6 Limitation of actions of contract and tort and certain other actions:
>
> 6(1) Save as hereinafter provided *the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued*, that is to say:
>
> (a) actions founded on a contract or on tort;
>
> (b) actions to enforce a recognisance;
>
> (c) *actions to enforce on award*;
>
> (d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or of a sum by way of penalty or forfeiture.

In *Punithavathi*, the Court of Appeal said that even if an order of costs can be construed as an award similar to that mentioned in s 6(1)(c) of the Limitation Act 1953, the taxation of costs in that case was commenced well within the six years period. However, it must be noted that there was no definitive pronouncement by the Court of Appeal in *Punithavathi* to the effect that, an award of costs must be acted upon and taxed within six years of the order. The Court of Appeal in *Punithavathi* need not delve into the question of whether the 12 years limitation under s 6(3) of the Limitation Act 1953 applied, as the court was of the view that even if the shorter six years under s 6(1)(c) were to apply, the application therein was within time.

[23] We find that a plain reading of s 6(1)(c) of the Limitation Act 1953 shows that it is not applicable to an award of costs, as the word 'action' used in that section is in connection with a cause of action. The taxing of the bill of costs is, with respect, not a cause of action to enforce an award, but rather a continuation of proceedings to ascertain the quantum of costs awarded. Thus, an order for costs is a consequential order and therefore must be sought in the proceedings. A fresh action cannot be brought to recover costs. See *Chin Yoke Choong Bobby & Anor v Hong Lam Marine Pte Ltd* [2000] 1 SLR 137 (CA). To that extent, taxation of an award of costs is not a fresh cause of action.

[24] Hence, the defendants would have to take further steps in the proceedings to have the award of costs quantified. Under the old regime in the RHC 1980 it was by taxation of the Bill of Costs. Once the costs are quantified, and so ordered, it merges with the main judgment. Thus, the period of limitation to enforce the judgment on costs would be the same as the period for enforcing any judgment. Therefore, we find that the period of limitation to enforce the award of costs is 12 years as provided in s 6(3) of the Limitation Act, which reads:

A An *action upon any judgment shall not be brought after the expiration of twelve years from the date on which the judgment became enforceable* and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

B **[25]** The High Court judge had considered the arguments on time bar raised by the parties, and in coming to his decision, had referred to the judgment of this court in *Punithavathi* and had further referred to and applied s 6(3) of the Limitation Act 1953. For the reasons stated above, we find that the High Court judge was entirely correct to apply s 6(3) of the Limitation Act and hold that C the period of limitation is 12 years. However, we do not agree with the learned High Court judge that limitation runs from the date of the dismissal of the plaintiff's appeal by the Court of Appeal on 5 December 2012. We hold that the time commences from the date of the High Court order dated 31 October 2010 when the award of costs was made. Hence, we find that the filing of encl D 15 on 30 April 2018 is well within time.

[26] The fact that there was a delay of some seven years before the defendants acted on the order dated 31 October 2010, by filing encl 15, cannot be denied. E The defendants had explained the delay by stating that they had initially waited for the plaintiff's appeal to the Court of Appeal to be heard and disposed. Subsequently, there were several change of solicitors, and these solicitors had not acted on the defendants' instructions to tax the costs. The defendants' present solicitors had then filed encl 15 when they took over conduct of the F matter.

[27] In the present case, the reasons for the delay has been explained by the defendants, and the High Court judge had accepted them. That is purely an exercise of discretion by the High Court judge. Having considered the reasons G and the facts presented, we do not find any reason to disturb that exercise of discretion by the High Court judge. In any event, delay not amounting to misconduct cannot constitute a ground for depriving a successful party of his costs. See *Charnjit Singh v Tan Chok How* [1960] 1 MLJ 207. And the plaintiff has not shown that he has been prejudiced by the delay, such that the court H should now deprive the defendants of their costs.

[28] In this regard, we find that there are no appealable errors in the decision of the High Court in respect of encl 15 that warrants appellate intervention.

I THE PRESENT O 59 OF THE ROC 2012

[29] When the defendants filed their application in encl 15, the applicable rules would be ROC 2012. After the coming into force of the ROC 2012, the taxation regime under the RHC 1980 was abrogated, and the court now fixes

costs at any stage of the proceeding. Generally, the court fixes costs after hearing submissions of counsel, at any appropriate stage of the proceeding. In some cases, the provisions of O 59 r 7 of ROC 2012 is relied upon, and the party entitled to cost may annex to the submission of costs, a bill for such costs which shall be in Form 117. This is usually done in more complex matters that may require a detailed breakdown of the costs and disbursements. However, for the ordinary run of the mill matters, simple submissions would suffice for the court to fix costs.

APPELLATE COURT'S POWER TO FIX COST HERE AND BELOW

[30] Further, under O 59 r 7(3) of the ROC 2012, the Court of Appeal, in exercise of its appellate jurisdiction, can determine and fix costs of the appeal as well as the costs of proceedings connected with it in the court below. O 59 r 7(3) of the ROC provides:

> (3) In the case of an appeal the costs of the proceedings giving rise to the appeal, as well as the costs of the appeal and of the proceedings connected with it, may be dealt with by the Court hearing the appeal; and in the case of any proceedings transferred or removed to the High Court from any other Court, the costs of the whole proceedings, both before and after the transfer or removal, may be dealt with by the Court to which the proceedings are transferred or removed.

CONCLUSION

[31] We are of the view that the matter ought not to be sent back to the High Court merely for costs to be fixed. In the interest of having this matter disposed off efficiently without taking up additional judicial time and resources, and without any further delay, we are inclined to apply the provisions of O 59 r 7(3) of the ROC 2012, and fix costs of the proceedings at the High Court as per the order, for which encl 15 was filed, as well the costs of this appeal. In that regard, we invite parties to orally submit on the issue of quantum here and below.

Order accordingly.

Reported by Ashok Kumar